

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CURTIS MILLER,

Plaintiff,

v.

B. CATES, FAYE MONTEGRANDE,
OLUFEMI OWOLABI, U. BANIGA,

Defendants.

Case No. 1:20-cv-1243-ADA-HBK (PC)

ORDER GRANTING PLAINTIFF'S
RENEWED MOTION TO PROCEED *IN*
FORMA PAUPERIS

(Doc. No. 28)

ORDER DIRECTING MONTHLY
INSTALLMENT PAYMENTS TOWARD
FILING FEE

Pending before the Court is Plaintiff's renewed motion to proceed *in forma pauperis* ("IFP"). (Doc. No. 28). Plaintiff, a former prisoner initiated this action while he was incarcerated at California Correctional Institution. (Doc. No. 1). Although currently released, Plaintiff remains obligated to pay the full amount of the statutory filing fee. 28 U.S.C. § 1915(b)(1). As set forth in the Court's July 31, 2023 Order, the total amount that remains due towards the \$350.00 filing fee is \$350.00. (Doc. No. 27 at 3). Due to Plaintiff's release from custody, there is no inmate trust account from which periodic filing fees may be garnished and forwarded to the Court. Although the Ninth Circuit has yet to decide how a released prisoner who is obligated to "pay the full amount of a filing fee" under 28 U.S.C. § 1915(b)(1) may proceed IFP after he is released, "the Ninth Circuit [did note] 'even prior to the PLRA...district courts possessed authority under the non-PLRA-related provisions of § 1915 to require partial and/or installment payments.'" *Makoni v. Downs*, 2016 WL 7210403, at *3 (S.D. Cal. Dec. 13, 2016) (quoting

1 *Putzer v. Attal*, 2013 WL 4519351, at *2 (D. Nev. Aug. 23, 2013)) (citing *Olivares v. Marshall*,
2 59 F.3d 109, 111 (9th Cir. 1995)).

3 Plaintiff's renewed motion to proceed IFP makes the showing required to proceed IFP, but
4 consistent with the Prison Litigation Reform Act, Plaintiff remains obligated to pay the full
5 \$350.00 statutory filing fee as set forth in 28 U.S.C. § 1915. Pursuant to § 1915(b)(1), the Court
6 will assess a monthly installment payment of \$20.00, which is less than 2% of Plaintiff's reported
7 monthly income. Plaintiff's first installment payment will be due on October 2, 2023. Plaintiff
8 shall continue to make monthly installment payments of \$20.00 on or before the 2nd day of each
9 succeeding month until the \$350.00 filing fee is paid in full.

10 Accordingly, it is **ORDERED**:

- 11 1. **No later than October 2, 2023**, Plaintiff shall mail to the Clerk of Court his first
12 monthly installment payment of \$20.00. The payment may be made by cashier's
13 check, money order, or personal check and made payable to the Clerk of Court.
14 Plaintiff shall include his name and Case No. 1:20-cv-01243-ADA-HBK on the check.
- 15 2. Plaintiff shall continue to make \$20.00 monthly installment payments to the Clerk of
16 Court on or before the 2nd day of each succeeding month until his \$350.00 filing fee is
17 paid in full.
- 18 3. Plaintiff's failure to timely make the \$20.00 monthly installment payment will result
19 in the undersigned recommending the district court dismiss this action.

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21 Dated: August 28, 2023

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23 HELENA M. BARCH-KUCHTA
24 UNITED STATES MAGISTRATE JUDGE
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